

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

GLG Farms LLC,	)	
	)	
Plaintiff,	)	Civil Action No. _____
	)	
v.	)	
	)	
BRANDT AGRICULTURAL	)	<b>COMPLAINT FOR PATENT</b>
PRODUCTS LTD,	)	<b>INFRINGEMENT</b>
	)	
Defendant.	)	<b>JURY DEMANDED</b>

Plaintiff GLG Farms LLC brings this Complaint for Patent Infringement against Defendant Brandt Agricultural Products Ltd.

**PARTIES**

**A. Plaintiff GLG Farms LLC.**

1. Plaintiff GLG Farms LLC (“GLG Farms”) is a limited liability company organized and existing under the laws of the State of North Dakota with a principal place of business at 242 3<sup>rd</sup> Avenue West, Sherwood, North Dakota 58782.

2. GLG Farms has been and continues to be a developer, manufacturer, marketer and seller of grain auger equipment including the Auger Jogger.

**B. Defendant Brandt Agricultural Products Ltd.**

3. On information and belief, Defendant Brandt Agricultural Products Ltd (“Brandt”) is a corporation organized and existing under the laws of Canada with a principal place of business at 13<sup>th</sup> Avenue & Pinkie Road, Regina, Saskatchewan, Canada S4P 3A1.

4. On information and belief, Brandt is engaged in the design, manufacture, sale within the United States, offering for sale in the United States, use within the United States, importation into the United States, and/or sale after importation into the United States of swing augers.

5. On information and belief, Brandt markets and sells swing augers worldwide, including in the State of North Dakota, through their distributors and dealers.

### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. On information and belief, Brandt is subject to personal jurisdiction in the District of North Dakota (“District”), consistent with the principles of due process and the North Dakota Long Arm Statute, because Brandt offers their products for sale in this District, has transacted business in this District, has contracted to supply goods in this District, has committed and/or induced acts of patent infringement in this District, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **FACTUAL BACKGROUND**

#### **A. U.S. Patent No. 7,708,131.**

10. GLG Farms is the owner of all right, title, and interest in U.S. Patent No. 7,708,131 filed on September 2, 2008, issued on May 4, 2010 and entitled “Swing Auger Hopper Drive” (“the ‘131 patent”).

11. A true and correct copy of the ‘131 patent is attached hereto as **Exhibit A**.

12. Pursuant to 35 U.S.C. §282, the ‘131 patent is presumed valid.

13. GLG Farms has given notice to the public that the apparatus made and sold under the ‘131 patent is patented by marking such apparatus in accordance with the provisions of 35 U.S.C. § 287.

#### **B. The Infringing Products.**

14. On information and belief, Brandt manufacturers swing augers including the HP Swing Away Auger and the XL Swing Away Auger.

15. On information and belief, Brandt manufactures the EZSwing Hopper Mover.

16. On information and belief, the EZSwing Hopper Mover is available on all Brandt Swing Away Augers including the HP Swing Away Auger and the XL Swing Away Auger.

17. On information and belief, Brandt makes, uses, offers for sale or sells in the United States, or imports into the United States, swing augers that include the EZSwing Hopper Mover.

18. On information and belief, Brandt exhibited the EZSwing Hopper Mover at the 2014 National Farm Machinery Show held in Louisville, Kentucky on February 12, 2014.

19. On information and belief, Brandt exhibited the HP Swing Away Auger with the EZSwing Hopper Mover at the 2014 Big Iron Farm Show held in West Fargo, North Dakota on September 9, 2014.

20. A true and correct copy of photographs of the HP Swing Away Auger with the EZSwing Hopper Mover exhibited by Brandt at the 2014 Big Iron Farm Show is attached hereto as **Exhibit B**.

**C. Infringement of the ‘131 Patent.**

21. On information and belief, Brandt has been aware of the ‘131 patent by at least March 1, 2014.

22. On information and belief, Brandt has been and still is infringing the ‘131 patent in this District and elsewhere in the United States without leave or license of GLG Farms and in violation of GLG Farms’ rights.

23. The swing augers manufactured, marketed, offered for sale, sold and imported into the United States by Brandt, including the HP Swing Away Auger with the EZSwing Hopper Mover, fall within the scope of and infringe at least Claim 1 of the ‘131 patent.

24. Such infringement is injurious to GLG Farms in that it is diverting from GLG Farms to Brandt’s customers who would otherwise buy GLG Farms’ products at the prices charged by GLG Farms.

25. On information and belief, such infringement is, and at all times herein has been deliberate, willful, intentional, and with full knowledge of the existence and validity of the ‘131 patent.

26. Because the damages GLG Farms has sustained and will incur in the future on account of Brandt's infringement are uncertain and impossible to calculate accurately, GLG Farms has no adequate remedy at law.

**COUNT I**  
***PATENT INFRINGEMENT***

27. GLG Farms realleges and incorporates the above paragraphs as though fully stated herein.

28. This cause of action is for patent infringement under the patent laws of the United States. 35 U.S.C. § 271 et seq.

29. GLG Farms has satisfied the notice provisions of 35 U.S.C. §287.

30. Brandt has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '131 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products that are covered by at least Claim 1 of the '131 patent, including, by way of example and not limitation, the HP Swing Away Auger shown in **Exhibit B**.

31. GLG Farms has been damaged by Brandt's infringing activities and will continue to be damaged by the infringing activities of Brandt.

32. On information and belief, Brandt has willfully and deliberately conducted the infringing activities described above, and GLG Farms therefore seeks an assessment of increased damages pursuant to 35 U.S.C. §285.

**JURY DEMAND**

33. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, GLG Farms respectfully requests a trial by jury of all issues properly triable by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff GLG Farms, LLC prays for relief as follows:

- A. For a judgment declaring that Brandt has infringed the ‘131 patent;
- B. For a judgment awarding GLG Farms compensatory damages as a result of Brandt’s infringement of the ‘131 patent, together with interest and costs, and in no event less than a reasonable royalty;
- C. For a judgment declaring that Brandt’s infringement of the ‘131 patent has been willful and deliberate;
- D. For a judgment awarding GLG Farms treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Brandt’s willful and deliberate infringement of the ‘131 patent;
- E. For a judgment declaring that this case is exception and awarding GLG Farms its expenses, costs, and attorneys’ fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- F. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining Brandt from further acts of infringement; and
- G. For such other and further relief as the Court deems just and proper.

Date: November 26, 2014

Respectfully submitted,

/s/ Michael S. Neustel

Michael S. Neustel (*ND State Bar ID #05452*)

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ATTORNEYS FOR PLAINTIFF